



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2010-14235

Dear Ms. Hojem:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393929 (MTA No. 2010-0578).

The Metropolitan Transit Authority ("METRO") received a request for the winning proposal pertaining to a specified request for proposals. Although you take no position on the public availability of the requested information, you believe the information may implicate the interests of SAP Public Services, Inc. ("SAP"). You inform us that SAP was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We received correspondence from an attorney for SAP. We have considered SAP's arguments and reviewed the information you submitted.²

Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²We note that SAP has submitted information that the company seeks to protect from disclosure. This decision is applicable only to the information that METRO submitted to this office in requesting this decision. See Gov't Code § 552.301(e)(1)(D).

would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(a)-(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

SAP claims section 552.110(b) for pricing, customer contacts, and other portions of the submitted information. Having considered SAP’s arguments and reviewed the information at issue, we first note that SAP was the winner of the bidding process to which the information pertains. The pricing aspects of a contract with a governmental entity are generally not excepted from disclosure under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview at 219 (2000) (federal cases applying analogous Freedom of Information Act exemption reason that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). We therefore conclude that METRO may not withhold any of SAP’s pricing information under section 552.110 of the Government Code.

With regard to the remaining information at issue, we have marked information relating to a customer contact that METRO must withhold under section 552.110(b). We note that the remaining customer contact information in question pertains to customers that are identified on SAP’s website. SAP has not demonstrated that the release of information relating to customers identified on the company’s website would cause SAP substantial competitive harm. Likewise, SAP has not made the specific factual or evidentiary showing required by section 552.110(b) that the release of any of the remaining information at issue would cause SAP substantial competitive harm. We therefore conclude that METRO may not withhold any of the remaining information under section 552.110 of the Government Code. *See* Gov’t Code § 552.110(b); ORD 661 at 5-6; *see also* Open Records Decision Nos. 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 at 3 (1982) (statutory predecessor to Gov’t Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, and qualifications and experience).

SAP also contends that the submitted documents contain private information. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov’t

³This office will raise section 552.101, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined that common-law privacy encompasses certain types of personal financial information. Personal financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body). We note that common-law privacy protects the interests of individuals, not those of business and governmental entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy).

SAP believes that submitted information relating to individuals associated with the company may present privacy issues. We find, however, that the information in question is not highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude that METRO may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

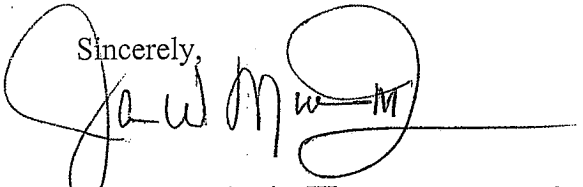
We note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1978); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, METRO must withhold the information we have marked under section 552.110 of the Government Code. The rest of the submitted information must be released, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JWM', with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 393929

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Larry J. Gusman
Assistant General Counsel
SAP Public Services, Inc.
1300 Pennsylvania Avenue, Northwest
Suite 600/North Tower/Gray
Washington, D.C. 20004
(w/o enclosures)